



NCTA

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

DANIEL L. BRENNER SENIOR VICE PRESIDENT, LAW & REGULATORY POLICY

1724 MASSACHUSETTS AVE N.W. WASHINGTON, D.C. 20036-1903

TEL: 202.775.3664 FAX: 202.775.3603

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EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 04-36, WC Docket No. 03-211

Dear Ms. Dortch:

On Tuesday, October 26, 2004, Howard Symons from the law firm of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, Neal Goldberg, NCTA general counsel, and I met with Matthew Brill, Senior Legal Advisor to Commissioner Abernathy, to discuss issues relating to the appropriate jurisdictional assignment for Voice over IP services.

We urged that any decision addressing the appropriate jurisdictional assignment for certain VoIP services (e.g., Vonage) also address the appropriate jurisdictional assignment for VoIP services provided over managed IP networks such as those offered by cable operators. We made the point that such services have integral interstate components that cannot be separated from any intrastate components. As such, these voice over IP services are jurisdictionally interstate.

Attached is a summary of the points we raised at our meeting. If you have any questions, please contact the undersigned.

Sincerely,

/s/ Daniel L. Brenner

Daniel L. Brenner

cc: M. Brill

ANY RULING ON FEDERAL JURISDICTION OVER VOIP SHOULD INCLUDE CABLE VOIP

- The rationale for asserting exclusive FCC jurisdiction over Vonage's VoIP service – preventing state imposition of inappropriate economic regulation -- applies equally, if not more so, to cable's VoIP offerings.
- Limiting the benefits of preemption to Vonage and other non-facilities VoIP providers would disadvantage the very companies that have invested more than \$85 billion in the broadband networks that make VoIP possible.
- The Commission should adopt a uniform approach to *all* voice services that use IP transmission between the service provider and the end user, make use of North American Numbering Plan ("NANP"), are capable of receiving calls from or terminating calls to the public switched network, and represent a possible replacement for POTS. Under these fundamental criteria, cable VoIP is as much a "true" VoIP offering as Vonage.
- Whether or not cable VoIP meets all of the other characteristics of Vonage's service, cable VoIP qualifies as "interstate."
 - Cable VoIP integrates voice with enhanced functionalities, such as call management, integrated voicemail and email, video conferencing, and other functions. All of these operate without regard to state boundaries.
 - Cable VoIP subscribers can access and use information stored on VoIP networks – such as retrieving voicemail and forwarding it to another user – from anywhere in the world.
 - Cable companies provide VoIP using regional and national network architectures that in many cases utilize centrally-located routers and softswitches to route local as well as interstate and international calls. Functions integral to every call, such as CALEA compliance, voicemail recording, storage, and retrieval, call record-keeping, 3-way calling, and other functions are provided from these central facilities. These facilities are often located in a state different from the origin of the call.
 - Interstate signaling is an integral part of cable VoIP. VoIP signaling occurs between the call origination point and the distant softswitch rather than the recipient endpoint. Unlike a circuit-switched call, a VoIP call is likely to involve interstate signaling even where the content of the call is intrastate.
- Basing preemption decisions on whether a particular VoIP service uses the public Internet or a managed IP network would unfairly favor certain business models. The Commission should not adopt a regulatory scheme based on a snapshot look at the network route used to deliver the service at a particular point in time.

- Recognizing the need for a uniform policy for all VoIP offerings, House Commerce Committee Chairman Barton, Rep. Pickering, and a bipartisan group of other House members have urged the Commission to declare that all VoIP services, “whether traversing the public Internet such as Vonage’s or over privately managed IP networks,” are subject to the Commission’s exclusive jurisdiction.
- Even if it acts in the context of the Vonage proceeding, the Commission can apply a ruling to all VoIP providers. *Cf.* Petition of Core Communications, Inc. for Forbearance, FCC 04-241, at ¶ 27 (rel. Oct. 18, 2004) (“Our rationale for forbearance . . . applies with equal force to other telecommunications carriers. Accordingly, on our own motion, we extend the grant of forbearance . . . to all telecommunications carriers.”).
- By failing to include all VoIP providers in its order, the FCC may invite state regulation of VoIP services other than Vonage.